

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Nakano Analyst: Roger Lackey Bill Number: AB 79X
Related Bills: See Legislative History Telephone: 845-3627 Introduced Date: February 26, 2001
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Solar Energy Credit

SUMMARY

This bill would allow a credit for the cost of a solar energy system.

PURPOSE OF THE BILL

The author's staff has indicated that the intent is to revive the former solar energy credit.

EFFECTIVE/OPERATIVE DATE

This bill is a tax levy and would be effective immediately. The credit would be operative for taxable years beginning on or after January 1, 2001, and before January 1, 2006.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to work with the author's office to resolve the implementation and policy considerations discussed below.

ANALYSIS

FEDERAL/STATE LAW

Federal law currently provides two energy-related credits: an investment energy credit and a business credit for the production of electricity from certain renewable resources.

The energy investment credit is equal to 10% of the basis of energy property placed in service during the taxable year. Energy property includes equipment that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat. It also includes equipment that produces, distributes, or uses energy derived from geothermal deposits. The equipment also must meet performance and quality standards prescribed by federal regulations.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Alan Hunter for GHG

03/30/01

The business credit for the production of electricity from certain renewable resources is equal to 1.5 cents multiplied by the kilowatt hours produced by the taxpayer's qualified energy resource and facility. To qualify, the energy is required to be sold to an unrelated person during the taxable year. Qualified energy resources include wind, closed-loop biomass, and poultry waste.

Former state law provided a credit equal to 10% of the cost of a solar energy system installed on premises in California and used for commercial purposes. The credit was available for taxable or income years beginning on or after January 1, 1990, and before January 1, 1994.

The credit provisions defined "solar energy system" as solar thermal electric and photovoltaic systems, but did not include devices that produced electricity through wind energy or energy conservation measures.

The former solar energy credit is further discussed in "**PROGRAM BACKGROUND**" below.

Current state law does not provide for a solar energy credit.

THIS BILL

This bill would allow a credit equal to 40% of the cost to purchase or lease a solar energy system installed on property located in California and used for residential or commercial purposes. The credit would be calculated after deducting the value of any grants provided by a public entity for the solar energy system.

This bill would define several terms including "cost," "owner," "commercial" and "residential" purposes, "premises," "single-family dwelling," "solar device," and "solar energy system."

A "solar device" would mean the equipment associated with the collection, conversion, transfer, distribution, storage, or control of solar energy.

A "solar energy system" would mean the use of solar devices designed or intended for the single purpose of producing electricity in excess of 30 watts per device. "Solar energy system" would include solar thermal electric systems and photovoltaic systems. "Solar energy system" would not include solar devices used to produce electricity from wind.

For solar energy systems installed on premises owned by more than one taxpayer, the credit would be divided in proportion to the taxpayers' respective interests in the premises. Partnerships would divide the credit pursuant to the written partnership agreement.

This bill would not allow a deduction for any cost for which a credit is allowed under this bill.

Any excess credit could be carried over and used in the following years, until exhausted.

This bill would require the Energy Resources Conservation and Development Commission (Commission) to hold public hearings establish guidelines, criteria, and limits on the eligible costs for a solar energy system. The guidelines and criteria would include requirements for safety, market readiness, reliability, and durability. The limit on eligible costs would be in terms of dollars per kilowatt.

This bill would allow the Commission to obtain the claimants' social security numbers or taxpayer identification numbers during the credit and certification application process for purposes of identifying a qualifying taxpayer to the department. The information obtained would be used exclusively for state tax administration purposes.

IMPLEMENTATION CONSIDERATIONS

This bill does not limit the number of years for the carryover period. As a result, the department would be required to retain the carryover on the tax forms indefinitely. Recent credits have been enacted with a limitation on the number of years for carryovers since experience shows credits typically are exhausted within eight years of being earned.

This bill is identical to the former solar energy credit that expired in 1994. The prior credit included significant uncodified law regarding the meaning of what constituted a "solar energy system." That uncodified law stated that a solar energy system must be composed of interrelated elements that were designed and intended at the time of installation to perform the individual function of producing electricity. The uncodified law was enacted by the Legislature to clarify the meaning of a "solar energy system," and thus resolve disputes that were occurring in administering the credit. The author may wish to include this portion of uncodified law in the meaning of solar energy system under this bill.

The lease provisions of the bill may lead to confusion for both the taxpayer and the department. The bill would allow lease payments made during the term of the lease to qualify for the credit. However, the bill also states that the credit can be claimed for the taxable year in which the solar energy system was installed. As a result, the lease provisions could be interpreted to allow the credit for only the lease payments in the first year and would exclude any lease payments made in the following years.

TECHNICAL CONSIDERATIONS

State law contains general provisions regarding how taxpayers that share in the costs eligible for a credit shall divide the tax credits. As a result, the language for the division of the credit for taxpayers other than partners is not necessary and should be removed from the bill. The provisions regarding the division of the credit between partners is addressed under Arguments/Policy Concerns below.

LEGISLATIVE HISTORY

ABX 27 and AB 1124 (Koretz, 2001/2002) would allow multiple credits and an accelerated depreciation deduction for the purchase of a power generation system. ABX 27 is in the Assembly Revenue and Taxation Committee while AB 1124 is at the Assembly Desk.

ABX 15 (Rod Pacheco, 2001/2002) would allow a 100% credit for the purchase of energy conservation measures that reduce a taxpayer's electricity and natural gas use by 5% from the previous taxable year and is in Assembly Revenue and Taxation Committee. ABX 86 and AB 1264 (Campbell, 2001/2002) would allow a 75% credit for the purchase and installation of a solar energy system for residential purposes. Both of these bills are at the Assembly Desk. SBX 17 (Brulte, 2001/2002) would allow a credit for the purchase and installation of a solar energy system for the production of electricity and is in Senate Revenue and Taxation Committee.

AB 873 (Takasugi, 1997/1998) would have allowed a credit equal to 40% of the cost of energy conservation measures. The bill also would have allowed a second credit equal to 10% of the cost of a solar energy system installed on premises located in California and used for commercial purposes, subject to certain requirements. The bill failed to pass the Assembly Revenue and Taxation Committee.

PROGRAM BACKGROUND

For taxable years 1990 through 1993, state law allowed a tax credit of 10% of the cost of a solar energy system installed on premises used for commercial purposes that were located in California, and owned or leased by the taxpayer. The credit could not be claimed for any solar energy system with a generating capacity in excess of 30 megawatts for any taxable year unless the federal government provided at least a 10% federal credit for that solar energy system.

For 1987 and 1988, state law allowed a credit of 12% of the cost of commercial solar energy systems installed on commercial premises, cooperatives, apartment buildings, or other similar multiple dwellings, including buildings and any other common areas of a condominium maintained by a homeowners' association.

From 1976 through 1988, state law allowed the solar energy tax credit for personal and commercial premises. The credit was refundable until 1981 and was significantly modified several times. The credit was allowed as a percentage of the purchase and installation costs of solar energy systems on premises owned by the taxpayer. For 1981 and later years, any unused credit could be carried over to succeeding years.

In 1987, the percentages allowed for the solar energy tax credit were 10% of the eligible costs for single-family dwellings, not to exceed a maximum credit of \$1,000. For commercial property the percentage was 25% of the eligible costs. However, only 15% of the eligible costs were allowed in that year for wind energy systems installed on or after January 1, 1986, and on or before June 30, 1987.

OTHER STATES' INFORMATION

Massachusetts: Currently has an energy credit that is equal to 15% of the net expenditures or \$1,000, whichever is less.

New York: For personal income tax (PIT) only, New York allows a credit for solar generating equipment equal to 25% of certain solar generating expenditures. The credit is capped at \$3,700 per system.

Michigan: Does not allow an energy-related credit, but exempts the value of energy conservation devices from the local property tax.

Oregon: Currently has two energy credits, a PIT consumer energy purchases credit and a corporate tax credit for the costs of energy projects. The consumer energy purchases credit allows various credits ranging from \$50 to \$1,500 for consumer purchases of certain items. The corporate credit for the costs of energy projects is a credit equal to 35% of the incremental costs of the project involving energy conservation and other related projects.

FISCAL IMPACT

Once the implementation considerations are resolved, this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Tax Revenue Estimate

Based on the discussion below, the revenue loss from this bill is as follows:

Revenue Impact of ABX79 For Taxable Years Beginning 1/1/2001 Assumed Enactment After 6/30/01 Fiscal Year Impact (In Millions)		
2001-2	2002-3	2003-4
-\$170	-\$260	-\$315

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this proposal.

Tax Revenue Discussion

The impact of this bill would depend upon the number of taxpayers and businesses incurring qualified solar energy expenses and the average credit applied against tax liabilities.

Despite low levels of electricity production by solar or other alternative sources by taxpayers, an incentive effect attributable to the current energy crisis in addition to this proposal is expected. Qualifying solar energy systems can range significantly. For this analysis the following data and assumptions were used:

- An average cost of approximately \$13,200 for 2001 was used (net of special rebate programs) for a solar energy system installed on single-family homes.
- 1% of all homes will install a solar energy system by 2006.
- An average cost of approximately \$143,000 for 2001 was used (net of special rebate programs) for mid-size systems between 10 kilowatts and 200 kilowatts.
- Average costs were not reduced by allowable federal credits.
- Projected volumes for mid-size systems were based on the California Energy Commission's projected rebate program.
- Assumed in aggregate that 100 megawatts for large systems would be achieved annually after the first year of implementation.
- Adjustments were made to account for offsetting tax effects of deductions for depreciation that would be otherwise allowed under current law.

ARGUMENTS/POLICY CONCERNS

Generally, credits require taxpayers to recapture the credit amount by adding it back to their tax liability if the associated item is subsequently sold within a specific amount of time after the purchase date. This bill does not include a recapture provision.

In the case of a partnership, the bill allows for the credit to be divided between the partners pursuant to a written partnership agreement. This provision permits the partnership to divide the credit among partners without regard to "substantial economic effect." Language to the same effect was included in a bill providing the same treatment for partnerships with regard to the low-income housing credit. The Governor identified the provision as a principal reason for vetoing that bill.

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